IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 475 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GEB

Versus

CAPRICORN BOARD MILLS PVT LTD

Appearance:

1. Appeal from Order No. 475 of 1994

MR TUSHAR MEHTA for Petitioner No. 1 (absent)

RULE SERVED for Respondents No. 1-4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/11/2001

ORAL JUDGEMENT

The appellant-Gujarat Electricity Board-original Defendant No.1 has challenged in this appeal the impugned order dated 16.12.1994 passed by the learned Civil Judge

(S.D.), Ahmedabad (Rural) at Mirzapur in Special Civil Suit No.13/94 below applications Exs.61 and 63 filed by the respondent-original plaintiff. This appeal was straightaway admitted by the learned Single Judge of this court on 30.12.1994. Along with this appeal Civil Application No.4836/94 was filed for interim relief. On that application rule was ordered to be issued by the learned Single Judge of this court on 30.12.1993 and ad-interim relief in terms of para 5(B) of that application was granted whereby the impugned order passed by the learned Trial Court was stayed. The said interim relief is in operation till today.

Though served, no one appears for respondent either in this main Appeal from Order or on Civil Application for stay, therefore, this matter is disposed of in absence of the respondents.

It is unfortunate that though this appeal from order is of 1994, even the learned counsel for the appellant was not present when this matter was called out. Last time i.e. on 29.10.2001 when it was placed before this court, on account of leave note of the counsel for the appellant, it was kept today. But as stated earlier, learned counsel for the appellant was not present, therefore, in his absence the matter is decided on merits.

Having carefully gone through the impugned order passed by the learned Trial Judge it clearly appears that the learned Trial Judge has completely misread the order dated 3.8.1994 passed by the learned Single Judge in appeal from order No.177/94, wherein, it is observed that the respondents-plaintiffs were in habit of misusing the process of law and keep on filing one after other suits on flimsy grounds. The courts should not interfere in such type of cases. In the instant case, the respondents-plaintiffs filed as many as nine suits before the trial court, five petitions and one company application before this court. The reasons assigned by the learned Judge while passing the impugned order below Exs.61 & 63 in Special Civil Suit No.13/94 are wholly untenable, therefore, the impugned order is required to be set aside because it is against the order passed by the learned Single Judge of this court in Appeal from Order No.177/94.

In view of the above discussion, this appeal is allowed and the impugned order passed by the learned Trial Court is set aside.

The Special Civil Suit No.13/94 is a old suit of 1994, therefore, the trial court is directed to decide the same as early as possible and not later than 31.12.2002, if it is not decided so far. Civil Application is disposed of as the main appeal is allowed.

(B.J.Shethna, J.)

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